IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 987 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHRAVANBHAI DHEDABHAI GAMIT - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
THROUGH JAIL for Appellant(s) : 1,MRS SHILPA R SHAH for Appellant(s) : 1,
PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 01/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA)

1. The appellant has preferred this appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 and challenged the judgment and order dated 25-08-1998 rendered by the learned Addl. Sessions Judge, Surat, Camp at Vyara, in Sessions Case No. 85 of 1998, convicting the appellant for the offence punishable under Section 302 of the I.P. Code and sentencing him to undergo life imprisonment and to pay fine of of Rs.200/-, in default, to undergo R.I. for two months and also convicting for the offence punishable under Section 201 of the I.P. Code and sentencing him to undergo rigorous imprisonment of two years and to pay fine of of Rs.100/-, in default of payment of said fine, to undergo simple imprisonment of two months. Both the sentences are ordered to run concurrently.

2. In brief, the prosecution case is that deceased Ramaniben was the wife of the appellant and they were residing at village Ghodchit, Taluka Songadh, Dist. Surat. There were disputes between them. On 4-12-1997 at about 20-00 hours there was quarrel between the appellant and deceased Ramaniben with regard to preparing meal. On account of such quarrel, the appellant

inflicted injuries to deceased Ramaniben on her head with an axe lying in their house. Ramaniben died on account of the injuries. Thereafter, to disappear evidence with an intention of screening himself from legal punishment, the appellant took body of deceased Ramaniben in nearby field and tried to disappear the evidence.

3. On the basis of the First Information Report lodged by Vasanji Makna Gamit offence was registered as I – CR No. 105 of 1997 at Songadh Police Station for the offence punishable u/s 302 and 201 of the I.P. Code and investigation was started. During the course of the investigation, statements of the witnesses were recorded. Panchnama of scene of offence, inquest panchnama and panchanama of recovery of muddamal axe were drawn. Dead body of deceased Ramaniben was sent for postmortem. The accused was arrested.

4. On completion of the investigation, charge sheet was laid before the Court of learned Judicial Magistrate, First Class, Vyara, for the offence punishable under Sections 302 and 201 of the I.P. Code. As the offence was exclusively triable by the Court of Sessions, the case was committed to the Sessions Court, Surat, Camp

at Vyara and it was registered as Sessions Case No. 85 of 1998. The learned Addl. Sessions Judge, Surat, Camp at Vyara framed charge Exh. 7 against the accused for the offences punishable u/ss 302 and 201 of the I.P. Code and the same was read over and explained to the accused who pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution adduced evidence to prove the charge levelled against the accused. On completion of recording of evidence by prosecution, the learned trial Judge explained to the accused the incriminating circumstances appearing against him in the evidence. The accused denied having committed the office in his further statement recorded u/s 313 of the Code of Criminal Procedure, 1973 and stated that false case has been filed against him and he is innocent.

5. After hearing the learned A.P.P. for the State and the learned advocate for the accused, the learned trial Judge found the accused guilty for the offence punishable under Section 302 and 201 of the I.P. Code and sentenced him to undergo the sentence as mentioned hereinabove. Being aggrieved and dissatisfied by the said judgment and order, the accused has preferred the present appeal.

6. We have heard the learned advocate Ms. Shilpa R. Shah for the appellant and the learned A.P.P. Mr. K.P. Rawal for the respondent – State at length and in great detail. We have also perused the judgment of the trial court as well as the record and proceedings of the case.

7. Learned advocate Ms. Shilpa Shah for the appellant submitted that the prosecution case rests on the sole evidence of child eye witness P.W. 3 Devendra Shravan and looking to the tenor of the evidence, the learned trial Judge committed error in convicting the appellant. She also submitted that the child witness admitted in his evidence that he was tutored by his maternal uncle, and therefore, the learned trial Judge could not have relied on the evidence of this child witness. Moreover, the alleged incident occurred at 20-00 hours on 4-12-1997 when child witness was allegedly present in the house. However, strangely the witness did not inform any one about the incident. Therefore, there is serious doubt about truthfulness of the evidence of this witness. Hence, the conviction of the appellant could not have been based upon such evidence and the appellant is required to be acquitted of the charge levelled against him by giving benefit of doubt and the appeal deserves to be allowed.

8. While opposing the appeal, the learned A.P.P. Mr. Rawal submitted that the child witness has supported the prosecution case. The chain of circumstances has clearly established the guilt of the appellant, and therefore, no interference is warranted in the impugned judgment and the appeal requires to be dismissed.

9. In order to prove the charge, the prosecution examined P.W. 1 Dr. Surendrabhai Ramjibhai Patel, the medical officer who performed postmortem of the dead body of deceased Ramaniben at Exh. 9. According to the evidence of this witness external injuries found on the dead body were recorded in Column No. 17 of the Postmortem Report Exh. 10 and the internal injuries found on the dead body were corresponding to the external injuries. The evidence also indicates that the injuries were possible by muddamal axe and the injuries were sufficient in the ordinary course of nature to cause death.

10. The prosecution produced postmortem report at Exh.10. It indicates the external and external injuries found on the dead body. The cause of death was due to damage of vital organ brain, due to fracture of the skull bones caused by blunt

heavy object. It is not the defence of the appellant that death was either suicidal or accidental. Therefore, in our view, the prosecution proved beyond reasonable doubt that the death of deceased Ramaniben was homicidal in nature.

11. In order to prove the charge only eye witness, son of deceased Ramaniben P.W. 3 Devendra Shravan was examined by the prosecution at Exh. 13. The witness was aged about 7 years, and therefore, assistance of interpreter was taken by the learned trial Judge before recording of the evidence of the child witness. The learned trial Judge ascertained that the child witness was able to understand the sanctity of oath. It appears from the evidence of this witness that the appellant inflicted three axe blows; one blow on her forehead, another on cheek and third on head of the deceased. The evidence also indicates that when the appellant inflicted the injuries the witness was present in the house and had witnessed the incident. The witness further deposed that he did not cry as the appellant told him that he would beat him if he (the witness) cried. The evidence of this witness indicates that after the incident the dead body was thrown near the field. The defence has tried to elicit by cross-

examination that the witness was tutored and he could not have witnessed the incident. But in reply to the question put by the court, the witness stated that the appellant inflicted the injuries with the axe and he narrated the incident as witnessed by him. It is true that the witness has not stated before the police that he did not cry as the appellant gave him threat to beat if he cried and that the dead body was thrown in the ditch. However, looking to the tender age of the witness, it cannot be expected that the child witness would be able to give all the details about the incident which occurred in his presence. The deceased was the mother of the witness. It is quite probable that the witness might not have understood seriousness of the incident. Even he might not have realised that his mother is done to death by his father. As regards tutoring the witness, had he been tutored by falsely implicating his father, he would not have withstood the cross-examination. It appears that the witness might have been asked by the relatives to give exact details as to what had happened as the witness was too young to understand the nature of act of his father. The appellant is the the father of the witness and there is no reason for him to falsely implicate the appellant. It is true that the witness did not make any detailed statement

before the Investigating Officer. But looking to the age of the witness, we cannot expect minute details of the incident from him. Moreover, looking to the age of the witness he might not have been able to understand significance of his evidence in the court. Therefore, it cannot be said that the witness was tutored. Hence, in our view, the evidence of this witness cannot be disbelieved simply because there are some discrepancies in the evidence of the witness. According to us, such discrepancies are not fatal to the prosecution case.

12. The prosecution examined informant P.W.2 Vasanji Makna at Exh. 11. The evidence of this witness indicates that he was informed about the incident on the next day at about 12-00 O'clock noon. Thereafter, he with his mother Nooriben and others went to the place where dead body of Ramaniben was lying and then they went to Songadh Police Station and lodged F.I.R. Exh.12. The defence has tried to demonstrate that the place where the dead body was lying was an open space clearly visible by others. However, that itself would not make the deposition of this witness unbelievable. As per the prosecution case, the incident took place at night around 20-00 hours on 4-12-1997 and after the incident the dead body was taken to the field. Therefore, it is

quite obvious that nobody would notice the dead body at night. The witness has admitted that his mother Nooriben was informed about the dead body when boys went for bath. However, P.W. 6 Nooriben did not say that she was informed about the incident by the boys who went for bath. On overall view of the evidence of this witness, it is clear that the defence has not been able to demonstrate that the evidence of this witness is not reliable.

13. The prosecution produced F.I.R. at Exh. 12. It was lodged at 17-00 hours on 5-12-1997. It is alleged therein that there were disputes between the appellant and the deceased and the informant was aware about the same. It also indicates that at about 12-00 noon on 5-12-1997 Nooriben informed the informant about dead body, and therefore, he went to the house of the deceased and at that time P.W. 3 Devendra informed him about the incident. The accusations made in the F.I.R. are dully supported by the oral evidence of the witness. Therefore, in our view, the prosecution proved beyond reasonable doubt that the appellant was involved in the offence.

14. The prosecution examined P.W. 6 Nooriben, the mother of the deceased Ramaniben, at Exh. 18. The evidence of this witness indicates that she

was informed about the incident by P.W. 3 Devendra son of deceased Ramaniben. Therefore, she went to his son Vasanji and informed him about the incident. The evidence indicates that P.W. 3 Devendra told her that the appellant killed Ramaniben.

15. The prosecution examined the Investigating Officer P.W. 7 Kahansingh Vaghsingh Jhala at Exh. 22. According to this witness, he carried out the investigation by drawing inquest panchanama Exh. 16, panchanama of scene of offence Exh. 17, panchanama of arrest of the appellant Exh. 23 and panchanama of discovery of weapon at Exh. 24.

16. The prosecution produced inquest panchanama at Exh. 16. It indicates that various injuries were found on the dead body of deceased Ramaniben.

17. The prosecution produced panchanama in respect of scene of offence at Exh. 17. It indicates that blood stained spot in diameter of 1 feet was found near the kitchen of the house of the appellant and the blood stained earth was taken and it was sent to F.S.L. for examination. Panchnama.

18. The prosecution produced panchanama of

discovery of the muddamal axe at Exh. 24 which indicates that the appellant showed his willingness to discover the weapon axe and after drawing discovery panchanama the appellant took the panchas to his house where the muddamal weapon axe was hidden. It indicates that the weapon was kept in iron box which was kept in the earthen pot in the house. The axe was discovered after making panchanama and it was sent to F.S.L. for examination.

19. The panchas have not supported the prosecution case regarding discovery of the muddamal axe. However, the Investigating Officer has duly proved the panchanama of discovery of the muddamal axe. Therefore, there is no reason to disbelieve the discovery panchanama. In view of this, In our view, the prosecution proved that the muddamal weapon axe was discovered at the instance of the appellant.

20. The F.S.L. report produced at Exh. 33 indicates that blood group – 'A' was found on the muddamal axe, banian of the appellant and blouse of deceased Ramaniben. It appears that the blood samples of the appellant and the deceased were not taken for examination. However, considering the fact that blood of the same group was found on the muddamal article axe,

cloth of deceased and cloth of the appellant, it can safely be inferred that the appellant inflicted the injuries to the deceased.

21. As regards the offence punishable u/s 201 of the I.P. Code, it clearly emerges from the evidence that the incident took place in the house of the appellant and after the incident the dead body was removed by the appellant from his house and was taken to nearby field with a view to disappear the evidence. The appellant has not offered any explanation as to how the dead body was found at the open space. Therefore, it becomes clear that the appellant tried to disappear the evidence with a view to screen himself from legal punishment.

22. It is significant to note that the incident took place at night on 4-12-1997 and the dead body was found on the next day at about 12-00 hours at noon. However, strangely the appellant did not make any search for his missing wife. Normally, a husband would make search for his wife if she does not return home at night. The appellant after the incident was arrested after two days i.e. on 6th December, 1997. There is no explanation offered by him as to where he was during this period. This circumstance clearly indicates that the appellant was involved in the

offence and he tried to hide himself from the police.

23. On Overall reading of the prosecution evidence, in our view, it can be safely concluded that the appellant was involved in the commission of the offence. Each separate piece of the evidence produced by the prosecution clearly implicates the appellant and it creates unbroken chain of evidence implicating the appellant in the offence.

24. In view of above, in our view, the learned trial Judge was justified in convicting the appellant on the basis of the evidence led before him. Therefore, the appeal deserves to be dismissed and the impugned judgment of the trial court is required to be confirmed.

25. For the reasons recorded in the judgment, the present appeal fails and is dismissed and the judgment and order of conviction and sentence dated 25-08-1999 passed by the learned Additional Sessions Judge, Surat, Camp at Vyara, in Sessions Case No. 85 of 1998 is confirmed.

(A.L. Dave, J.)

(Bankim N. Mehta, J.)

/JVSatwara/